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the SS Entities

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

SPORTS SHINKO CO., LTD.,
a Japanese corporation,

Plaintiff,

vs.

QK HOTEL, LLC, a Hawai`i
limited liability company,
et al.,

Defendants,

and

FRANKLIN K. MUKAI,

Third-Party
Plaintiff,

vs.

) CIVIL NO. CV 04-00124
) ACK/BMK
)
) CONSOLIDATED CASES
)
) PLAINTIFF'S AND THIRD-PARTY
) DEFENDANTS SPORTS SHINKO CO.,
) LTD., SPORTS SHINKO (HAWAII)
) CO., LTD., SPORTS SHINKO
) (MILILANI) CO., LTD., SPORTS
) SHINKO (KAUAI) CO., LTD.,
) SPORTS SHINKO (PUKALANI) CO.,
) LTD., SPORTS SHINKO RESORT
) HOTEL CORPORATION, SPORTS
) SHINKO (WAIKIKI) CORPORATION,
) AND OCEAN RESORT HOTEL
) CORPORATION'S CONCISE
) STATEMENT OF FACTS IN SUPPORT
) OF OPPOSITION TO KG
) DEFENDANTS' MOTION FOR SUMMARY
) JUDGMENT IN CV NO. 04-00128
) ACK-BMK; DECLARATION OF
) GLENN T. MELCHINGER;
) DECLARATION OF
) STEVEN C. SILVER; LIST OF
) TRANSLATED DOCUMENTS;

KIAHUNA GOLF CLUB, LLC,)
a Hawai'i limited liability)
company, et al.,)
Defendants,)
and)
FRANKLIN K. MUKAI,)
Third-Party)
Plaintiff,)
vs.)
SPORTS SHINKO CO., LTD.,)
a Japan corporation, et al.,)
Third-Party)
Defendants.)

SPORTS SHINKO CO., LTD., a) CIVIL NO. CV 04-00127
Japanese corporation,) ACK/BMK
Plaintiff,)
vs.)
OR HOTEL, LLC, a Hawai'i)
limited liability company,)
et al.,)
Defendants,)
and)
FRANKLIN K. MUKAI,)
Third-Party)
Plaintiff,)
vs.)
SPORTS SHINKO (USA) CO., LTD.,)
a Delaware corporation, et al.,)

Third-Party)
Defendants.)

)
SPORTS SHINKO (USA) CO., LTD.,) CIVIL NO. CV 04-00128
a Delaware corporation,) ACK/BMK
)
Plaintiff,)
)
vs.)
)
MILILANI GOLF CLUB, LLC,)
a Hawai`i limited liability)
company, et al.,)
)
Defendants,)
)
and)
)
FRANKLIN K. MUKAI,)
)
Third-Party)
Plaintiff,)
)
vs.)
)
SPORTS SHINKO CO., LTD.,)
a Japan corporation, et al.,)
)
Third-Party)
Defendants.)

PLAINTIFFS' AND THIRD-PARTY DEFENDANTS' SPORTS SHINKO CO., LTD., SPORTS SHINKO (HAWAII) CO., LTD., SPORTS SHINKO (MILILANI) CO., LTD., SPORTS SHINKO (KAUAI) CO., LTD., SPORTS SHINKO (PUKALANI) CO., LTD., SPORTS SHINKO RESORT HOTEL CORPORATION, SPORTS SHINKO (WAIKIKI) CORPORATION, AND OCEAN RESORT HOTEL CORPORATION'S CONCISE STATEMENT OF FACTS IN SUPPORT OF OPPOSITION TO KG DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN CV NO. 04-00128 ACK-BMK

Pursuant to Rule 56.1 of the Rules of the United States District Court for the District of Hawai`i ("Local

Rules"), Plaintiff and Third-Party Defendants SPORTS SHINKO CO., LTD., SPORTS SHINKO (HAWAII) CO., LTD., SPORTS SHINKO (MILILANI) CO., SPORTS SHINKO (KAUAI) CO., LTD., SPORTS SHINKO (PUKALANI) CO., LTD., SPORTS SHINKO RESORT HOTEL CORPORATION, SPORTS SHINKO (WAIKIKI) CORPORATION, and OCEAN RESORT HOTEL CORPORATION (collectively the "SS Entities") hereby submit their concise statement of facts in opposition to KG Defendants' Motion for Summary Judgment in CV No. 04-00128 ACK-BMK, filed January 13, 2006:

KG Defendants' Concise Statement	Sports Shinko ("SS") Entities' Position
For the purposes of this motion, the allegations in the complaints in the five consolidated lawsuits are true.	Admit that some case law provides that statements in a complaint are admissions, and no more. This statement of Defendants is misleading, incomplete, and is not a statement of fact. It is a presumption of law for the purposes of the Motion, and is <i>unsupported by any case law citation</i> in the KG Defendants' Motion. SS denies all negative inferences based on this statement or on the allegations in any Complaint or Amended Complaint in these consolidated cases.

<p>At all material times, Toshio Kinoshita exerted operational control over all of the SS entities, including (among others) plaintiff Sports Shinko (USA) Co., Ltd. ("SS-USA") and Sports Shinko (Mililani) Co., Ltd. ("SS Mililani") [through his title of President of the SS entities and direct or indirect shareholder].</p>	<p>Admit Toshio Kinoshita had authority over the SS Companies, but deny that Defendants have proved Toshio <i>actually</i> "exert[ed] operational control" sufficient for the purposes of this Motion. See discussion at Memorandum in Opposition at p. 21, n.5. Defendants fail to distinguish "authority" from <i>exercise</i> of control.</p>
<p>Toshio Kinoshita was President of [the Sports Shinko entities].</p>	<p>Admit, but incomplete and misleading; the SS Companies deny any adverse inferences.</p>
<p>Toshio Kinoshita owned a majority of the stock of SS-Japan [and other statements regarding ownership].</p>	<p>Admit, but incomplete and misleading; the SS Companies deny any adverse inferences.</p>

FACTS	EVIDENTIARY SUPPORT
<p>There is evidence of Toshio's and the former managements' (including Mukai's) efforts to "hinder, delay, and defraud" SS-Japan's lenders.</p>	<p>Fukuda Decl. at ¶¶ 21-23; see Exs. "1", "5", "6", "8" & "17"; see also related factual issues listed at p. 19 Motion In Opposition to KG Defendants Motion for Summary Judgment and chronology at pp. 14-15.</p>

FACTS	EVIDENTIARY SUPPORT
Toshio Kinoshita, Satoshi Kinoshita and Franklin Mukai (among others) ignored higher cash offers for the SS Hawaii properties brought by Colliers Monroe Friedlander, and transferred the SS Hawaii subsidiaries' property to Defendants for substantially less than their fair value.	Exs. "9" - "15" & "26".
The Resolution and Collection Corporation ("RCC") told Sports Shinko Co., Ltd. of its intent to place SS-Japan into reorganization proceedings in January, 2002, and Toshio held a directors' meeting regarding this prior to the RCC's filing of reorganization proceedings on January 28, 2002.	Fukuda Decl. at ¶ 23.
SS-Japan negotiated to repay its debt to its Japan lenders by selling its Hawaii and other overseas assets.	Ex. "1"
The speed and very nature of the transfers to the KG Defendants are suspect on their face, especially on the eve of bankruptcy and a lawsuit by David Resnick, with seller financing and no cash down, despite higher cash offers.	Exs. "9" - "15", "25", "26", "27", "30", "32", "33"; Fukuda Decl. at ¶ 23.
SS's Pukalani Sewage Treatment Plant (the "STP") on Maui was not a liability; one purchaser offered \$11.5 million cash for Sports Shinko (Pukalani) Co., Ltd.'s Maui property and the STP. Another purchaser offered \$7.5 million cash for the same.	Exs. "11", "12", "36"; Melchinger Decl. at ¶. 41.

FACTS	EVIDENTIARY SUPPORT
<p>The former SS management, including Toshio, engaged in a scheme to hinder, delay or defraud creditors involving placing management agreements on the SS Hawaii subsidiaries' properties and with payments of "termination fees" to Resort Management Services (Hawaii), Inc., a company owned and operated by a former Sports Shinko officer and Toshio's former personal secretary, Yasuo Nishida.</p>	<p>Exs. "2", "3", "4", "5", "6", "7", & "8". Defs'. Exs. "K" - "M".</p>
<p>The Sports Shinko's ("SS") intercompany loans were made for business purposes, were structured as they were because of Japan law and Japanese bank lending practices, and gave Japan banks rights against the SS Hawaii subsidiaries' properties.</p>	<p>Fukuda Decl. at ¶¶ 11-20 & Ex. "T-1" <i>UFJ Bank Limited v. Ieda</i>, 109 Hawai`i 137, 139-140 & n.6, 2005 Haw. LEXIS 608 at *5, *6 & n.6 (Dec. 8, 2005).</p>

DATED: Honolulu, Hawai`i, February 17, 2006.

/s/ Glenn Melchinger
 PAUL ALSTON
 GLENN T. MELCHINGER

Attorneys for Plaintiffs
 and Third-Party
 Defendants,
 the SS Entities

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I caused a true and correct copy of the foregoing to be served on the following persons by facsimile, hand-delivery or U.S. mail, postage prepaid (as indicated below) to their respective addresses:

	HAND- DELIVERED	ECF	MAILED
WILLIAM A. BORDNER, ESQ. Suite 3100, Mauka Tower 737 Bishop Street Honolulu, HI 96813	()	(X)	()
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Attorneys for Defendants KIAHUNA GOLF CLUB, LLC; KG KAUAI DEVELOPMENT, LLC; PUKALANI GOLF CLUB, LLC; KG MAUI DEVELOPMENT, LLC; MILILANI GOLF CLUB, LLC; QK HOTEL, LLC; OR HOTEL, LLC; AND KG HOLDINGS, LLC			

DATED: Honolulu, Hawai`i, February 17, 2006.

/S/ Glenn Melchinger

PAUL ALSTON
GLENN T. MELCHINGER

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